

LAWRENCE F. BAUM ET AL.

IBLA 81-763

Decided September 24, 1982

Appeal from decisions of the Oregon State Office, Bureau of Land Management, declaring mining claims null and void ab initio. OR MC 37846 through OR MC 37849.

Affirmed.

1. Mining Claims: Lands Subject to

The lands underlying a nonnavigable lake are not available for the location of mining claims where the uplands have been patented without reservation of minerals to the United States or where the uplands in the public domain have been appropriated.

APPEARANCES: Lawrence F. Baum, Kirkland, Washington, for appellants; Donald M. Phillips, Bellevue, Washington, adverse party.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Lawrence F. Baum et al. 1/ have appealed decisions dated May 13, 1981, by the Oregon State Office, Bureau of Land Management (BLM), declaring the OR MC 37846 through OR MC 37849 mining claims null and void ab initio.

All of the claims were located on September 18, 1980. OR MC 37846, the Turtle Lake Association Placer, is described in the notice of location as claiming:

[M]ineral rights of the U.S. government-owned Turtle Lake, lying in the SE 1/4 NE 1/4 of Sec. 9, and the SW 1/4 NW 1/4 of Sec. 10, T. 36 N., R. 26 E. W.M., as shown in the Meander Survey of said Lake, Vol. 125, p. 565, 567, 628, 631, U.S. Deputy Surveyor's Field Notes, dated 1898, and entitled "Subdivision and Meander lines of T. 36 N., R. 26 E."

The other claims, OR MC 37847 through OR MC 37849, are the Turtle Lode Nos. 1 through 3. The location notices for these claims contain similar statements and also describe lands in T. 36 N., R. 26 E., underlying Turtle Lake.

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1/ The other named appellants are James Davis, John Oakes, and Roger Bennett.

The decisions appealed from state:

All the lands bordering the above-mentioned Turtle Lake are patented, except for the areas within two separate unpatented lode mining claims, one at the east end of the lake and the other at the southwest side of the lake. 2/ Therefore, most of the lake is privately owned by virtue of riparian rights of the adjoining landowners, and very little of it belongs to the public domain. [Footnotes omitted.]

The decision in OR MC 37846 declared the Turtle Lake Association Placer claim null and void ab initio "for the reason that the location is faulty in that the public land described is not contiguous." The decision declaring the Turtle Lode lode claims null and void contained the following paragraph: "The captioned mining claims are hereby declared null and void, ab initio, for the reason that because of the limited areas of public domain within the lake, it is not possible to locate any lode claims in the area in accordance with the regulations in 43 CFR 3841." By way of a footnote, all decisions stated that no subsequent appropriation of the bed of a nonnavigable body of water can interfere with the rights of a prior proprietor bordering thereon. The file discloses that Turtle Lake is not a navigable body of water.

On appeal, appellants contend that their claims are correctly located on open, air, and water covered lands interior to the meander line of the lake. Appellants have submitted copies of three patents covering all lands (except the two mining claims not involved in the appeal) peripheral to the lake. Appellants state that the acreages specified in these patents agree exactly with the acreages lying exterior to the United States Government meander line and therefore do not include any lands interior to the meander line. Appellants also note that the landowners pay taxes only on the amount of land specified in the patents. For these reasons they conclude that the land interior to the meander line is open to location.

By letter of May 8, 1981, Donald M. Phillips advised BLM that he was the owner of "the property around Turtle Lake in Section 9 of T. 36 N., R. 26 E." He indicated that the claims at issue covered his and other private property, and alleged that the claimants had caused property damage by careless prospecting. BLM considered this letter a protest. In connection with the appeal, Phillips submitted a statement of position urging the Board to affirm the BLM decision, contending essentially that the lands interior of the meander line are not open to location.

[1] Appellants' assertions that the lands underlying the lake (lands interior to the meander line) are open to mineral location are without merit.

The general rule is that meander lines are not run as boundaries, but to define the sinuosities of the banks of the stream or other body of water, and as a means of ascertaining the quantity of land embraced in the survey; the stream, or other body of

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2/ These two unpatented lode claims, OR MC 32231 and OR MC 32238, are not involved in this appeal.

water, and not the meander line as actually run on the ground, is the boundary.

Manual of Surveying Instructions 1973, U.S. Department of the Interior, Bureau of Land Management at 93-94; Producers Oil Co. v. Hanzen, 238 U.S. 325 (1915).

Under Federal common law, the bed of a nonnavigable lake belongs to the shoreowners in a pie-shaped fashion to the center of the lake. 3/ See Bourgeois v. United States, 545 F.2d 727, 730 (Ct. Cl. 1976). While that portion of Turtle Lake abutting public land would be in the public domain, the beds of meandered nonnavigable streams are subject to location under the United States mining laws only when the abutting upland is unappropriated. See United States Department of the Interior, Cir. 1278, Information in Regard to Mining Claims on the Public Domain, 54 I.D. 134, 136 (July 21, 1932). The two unpatented lode mining claims abutting the lake constitute an appropriation; therefore, the areas of public domain in the lake are not open to location. Since the remainder of Turtle Lake has passed from public to private ownership by virtue of the riparian rights of the shoreowners, the mining laws no longer apply and that lake area is not available for location of mining claims. Samuel A. Chesebrough, 49 IBLA 249 (1980). It follows that BLM correctly declared the appellants' claims null and void ab initio.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

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Gail M. Frazier  
Administrative Judge

We concur:

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Douglas E. Henriques  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

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3/ In the case of navigable waters, the state would have jurisdiction over the land beneath and this Board would be without jurisdiction to rule upon appellants' rights with respect to mining claims there. However, where, as here, it is asserted that unpatented mining claims are purportedly located on Federal lands, the Board's jurisdiction to rule on their validity is not impaired. See Gary Willis, 56 IBLA 217 (1981).

